

Finally, the property must be taken without just compensation. The FCC must also concede that the two proposals promoting mandatory free air time do not include an offer to justly compensate the broadcasters for their private property. Therefore, as is, the proposals could not pass constitutional muster.

If, however, the FCC agrees that political candidates access to the public through privately owned and operated television air time is necessary for the reasons set forth in the NOI, then the FCC would be required to justly compensate the private broadcasters. The determination of the air time's value would require research into the fair market value of that particular block of time. In order to make such a determination, one must consider factors such as the common asking price for the block on that specific time of day, day of week, time of year, as well as any special events that the station is broadcasting which may affect ratings. This very elaborate factual determination would have to be made on a station-by-station (case-by-case) analysis -- a process which would require a great deal of agency resources. Furthermore, compensating broadcasters in this manner could prove to be prohibitively expensive, as the NAB Report states that in one election cycle its broadcasters voluntarily devoted \$148.4 million worth of air time.⁶

(C) The Proposal is Impractical and Will Only Lead to More Governmental Intervention
and Administrative Burden

The proposals' purpose, as advocated by the Gore Commission and Geller, et al., is to

⁶See NOI, item #35.

provide more political candidates with access to air time. These proposals, if implemented, would therefore “fundamentally affect the electoral process.”⁷ Surely the FCC, as an unelected body, would not want to tamper with the electoral process, as Congress is the sole governmental branch entrusted with such power. Such action would constitute a separation of powers conflict, in that the executive branch would be exercising powers specifically reserved by the Constitution to the legislative branch. For an executive agency to exempt a Constitutional Amendment is per se unconstitutional.

Additionally, because the purpose behind adopting these proposals is to affect candidate access to the public and thereby affect the electoral process, station management and discretion, as proposed in the NOI, would become impractical. Indeed, involvement in the electoral process signals the necessity for governmental involvement. One can easily imagine a scenario in which a disgruntled political candidate, who was denied access to air time due to either logistical reasons (only so many candidates could logistically be allowed access) or his unpopularity (broadcasters as a rule try to air subjects that attract viewer interest), would attempt to redress his concerns in court. A tribunal would decide that because governmental action had mandated that candidates have access to the air time, and because the political process is also governmentally supervised, the government should also regulate the process by which political candidates gain access to the air time. However,

⁷Commissioner Powell’s expressed reservations about the constitutionality of the proposed rulemaking. Specifically, Powell said that he had “grave concerns” about whether the FCC should act on issues that could “fundamentally affect the electoral process” without specific Congressional direction. Additionally, Commissioner Furchtgott-Roth stated that Congress has “deliberately decided not to act” on free air time, and therefore he asked whether the FCC should become involved in subsidizing the political process. *CFCC Opens DTV Public Interest Inquiry Despite Reservations*, COMM. DAILY (December 16, 1999).

several questions would remain: Which governmental entity would be entrusted with the decision-making process? The FCC? The FEC? Local government? How would that governmental body decide which candidates receive access to air time? Would this require mandating that broadcasters allocate additional free air time out of their broadcasting day? Would the governmental entity have the resources to allocate to the decision making process? Simply put, by involving private entities in the public political process, the FCC would be opening the door not only to constitutional challenges but also to increased governmental involvement and administrative burden.

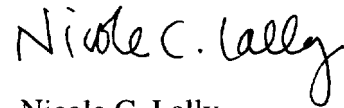
Conclusion

In sum, the proposals made by the Gore Commission and by Geller, et al. would stunt the only recent progress of DTV implementation, impose obligations not required of DTV's competitors in the communications marketplace, raise such constitutional problems as a Takings Clause violation and a separation of powers violation, and ultimately require more governmental interference in the DTV industry. Additionally, it is not entirely clear why the advent of DTV should trigger the imposition of new requirements on broadcasters. The NOI recognizes that broadcasters have donated a considerable amount of air time to public interest matters,⁸ a definite sign of successful self-regulation. The *recommendation* proposed by the FCC (as opposed to the *regulations* also proposed) would encourage broadcasters to devote more time to the public interest and allow the

⁸Specifically, in the 1996 election cycle, broadcasters valued their time at \$148.4 million, and several large networks provided free air time to presidential candidates. *See* NOI, item #35.

young DTV industry to implement these recommendations without triggering all of the constitutional and pragmatic problems that would accompany a mandate.

Sincerely,

A handwritten signature in black ink that reads "Nicole C. Lally". The signature is written in a cursive, flowing style with a large, stylized "N" and a long, sweeping tail on the "y".

Nicole C. Lally

RECEIVED

MAR 23 2000

FCC MAIL ROOM

TO : Chairman William E. Kennard

FROM : Robert R. Kurtz

CC : Professor Glenn H. Reynolds

DATE : March 16, 2000

RE : Comment on Proposed "Public Interest Obligation of
Television Broadcast Licensees"

Dear Chairman Kennard,

In response to the Federal Communication Commission's request for public comment, 65 Fed. Reg. 4211, (January 26, 2000), I would like to express my concerns about the obligations of Television Broadcast Licensees as they make the transition from analog to digital television. From the perspective of a graduating law student about to enter the private sector, the potential of digital television to affect change in the community at large is unmatched. The Federal Communication Commission's [FCC] Notice of Inquiry noted a panoply of concerns raised by various special interest groups. Based on the "Gore Commission" recommendations, the FCC Notice of Inquiry sought, in particular, comment and reaction to the duties or obligations of broadcast licensees concerning (1) the potential effects the new

technology has on children, (2) public health, and (3) greater accessibility to technology by persons with disabilities. I am writing in support of placing greater responsibilities on broadcast licensees as they make the transition from analog to digital television.

Introduction

Digital Television holds the promise of providing interactive programming in every home in the country who cares to own a television. Digital Television broadcasters will have the potential to transmit more data into a household than ever before considered possible. The combination of traditional television programming coupled with Internet-like access to information and products makes Digital Television an unmatched tool for marketing and advertising.¹

Broadcasters will have the ability to target individual homes, and individual viewers, with taste specific advertisements. Broadcasters will have the ability to track viewing preferences and send targeted advertisements directed at the particular viewer. Rather than waiting for the consumer to decide to purchase a product, advertisers will be able to take

¹The Center For Media Education- <http://www.cme.org/>

advantage of impulse buying tendencies. Broadcasters and advertisers will have the ability to send specific advertisements to a consumer. Through interactive programming, the consumer will be able to change screens and purchase the product instantly. This tool has great potential in helping the community, but it also has great potential for abuse.

Children and Digital Television

The 1990 Children's Television Act limited the duration of advertisements directed at children to twelve (12) minutes per hour on week days and ten minutes and thirty seconds (10.5) per hour on weekends.² This presents a serious problem when applied to the realm of Digital Television. While it is fairly easy for a broadcaster to determine the number of minutes advertisements have been directed at children per hour in analog broadcasts, it is much more difficult in Digital Television.

If a child has the capacity to switch screens from a program to an "Internet like" screen for interactive communication with a favorite cartoon character on a commercial site, should the broadcaster count this as part of the time directed at children. The answer must be an unequivocal yes. Studies have shown that

²Children's Television Act codified at 47 U.S.C.A. §303a.

children are more susceptible to advertisements than adults.³ Furthermore, studies have shown that children have greater difficulty distinguishing between the reality/fiction of television.⁴

Inquiry must be made into the effects this type of interactive programming will have on children. The specter of children's individual viewing habits being tracked and then targeted by advertisers should cause adults to question the intrusiveness of this tool in the home. Broadcast Licensees need to take extra care to assure that children are not exposed to products that present serious risks to their well-being.

Public Health

Directly related to the concern for children interacting with Digital Television, is the obligation of broadcast licensees concerning public health. As the Center for Media Education has noted, the Internet is already full of web sites and web advertisements devoted to liquor companies and tobacco companies.⁵ The challenge facing broadcast licensees is to

³The Center For Media Education- <http://www.cme.org/>

⁴Children's Understanding of What is 'Real' on Television- <http://www.aber.ac.uk/~dgc/realrev.html>

⁵The Center for Media Education- <http://www.cme.org/>

guarantee that advertisements are targeted at the appropriate audience. Tobacco companies have been banned from television advertising since the 1970's. Liquor companies have voluntarily limited their advertisements for many years. With Digital Television, it will be possible for a consumer to switch from a program to a web site advertising a product not traditionally advertised on television.

The issue is whether a child will have access to the "Joe Camel" character through the Internet capacity attached to Digital Television. If this threat is not severe enough, it is quite possible that "Joe Camel" will become interactive, and entertain children. The same concerns are relevant in considering adult viewers.

Americans across the nation are growing more unhealthy every year. Popular culture continues to glorify the perfect body, but in reality Americans are getting larger every year. Digital Television has the potential to increase the rate of America's health decline. Cigarette advertisements will be available, as well as liquor advertisements. Consumers will now have little reason to leave their homes, as Digital Television allows people to shop from home. Additionally, the relatively few broadcast licensees will control the flow of health related information to

the public.

It is necessary to require that broadcast licensees dedicate a substantial portion of broadcast time to health issues. Digital Television has the technical capacity to transmit health news in multiple formats. It is certain that the more information available to the public in varying formats, will benefit the greatest number of people.

Access for the Disabled

Digital Television broadcasts can be transmitted in several different levels. A broadcaster will be able to broadcast a traditional television program. At the same time, the broadcaster will have the ability to overlay that program with other information, such as closed captioning or other services related to allowing access for the disabled.

Broadcasters should be required to provide more of these services. People For Better TV [PBTv] has suggested that closed captioning and descriptive services be phased in over the first four (4) years of a stations digital broadcast. PBTv limits its recommendations to public service announcements, public affairs programming, and political programming.⁶ These recommendations

⁶People For Better TV- <http://www.bettertv.org/dangers.html>

do not go far enough.

Digital Television can revolutionize technology for the disabled. Digital Television can open up almost unlimited amounts of information and entertainment for the disabled. The ease of access Digital Television offers is unparalleled. Broadcasters should be required to expand closed captioning and descriptive services to all programming. Four years will provide ample time to phase in this additional information, if it is done at the same time as the digital system is developed. Rather than bear the expense of retroactive action, broadcasters should be required to add these services at the same time they provide new 'traditional' programming.

Conclusion

As broadcast licensees begin the transition from analog to digital television, we are presented with a unique opportunity to make some necessary improvements for the public. Digital Television Broadcasters need to consider the potential effects on children, and must accept stricter standards of conduct to protect the nation's children. Broadcasters also need to be aware that the adult population is at risk as well. Broadcasters need to accept greater responsibility in providing the public with health information. Furthermore, broadcasters must guard

against the invasion of advertising dollars from tobacco and liquor companies. Finally, broadcasters must assume responsibility for providing greater access to the disabled with the advance technology available. This will assure that a significant minority will have greater access to information and entertainment.

Thank-you.

Robert R. Kurtz

RECEIVED

March 11, 2000

MAR 23 2000

FCC MAIL ROOM

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Public Interest Obligations of Television Broadcast Licensees

Dear Chairman Kennard:

I am a third year law student at the University of Tennessee College of Law commenting on the Proposed Rules for the Public Interest Obligations of Television Broadcast Licensees.¹ Although I am somewhat opposed to stricter regulations for television broadcasters solely based on the conversion to digital, I do understand the need for regulation considering the enhanced quality of television. However, I believe that all efforts should be made to encourage voluntary efforts on the part of broadcasters. Because the future of America's children is so important, if stricter regulations are deemed necessary, educational programming is an area that should be addressed. Free air time for political candidates and the promotion of diversity are also issues of such critical importance.

I. Is there an identifiable need for further regulation of television program content?

Under the Communications Act of 1934, before issuance, renewal, or transfer of a broadcast license there must be a finding that it will serve the public interest. To this end, the Commission has already delineated regulations regarding the public interest obligations of broadcasters. Are stricter regulations required simply because broadcasters are changing from analog to digital?

Many would argue yes, relying on the new technical capability and improved picture quality of digital television. However, considering the financial burdens that have been placed on broadcasters to make the transition from analog to digital, any new regulations should be as burdenless as possible.

Although it is arguable that the enhanced quality of digital television requires more stringent public interest obligations, the huge costs of transition endured by the industry suggest that a different course should be taken. Among the 120 stations in the top thirty markets, the average allocation for equipment expenditures in the first year of digital adoption was "\$3 million - about 5-five percent of average annual revenues of \$57 million."² Although five percent may seem like a small amount when compared to the average annual revenue, for smaller stations the burden could become intolerable. For example, many smaller stations have opted to sale rather than incur the burdens of digital conversion.³ David Woods, owner of WCOV-TV in Montgomery, AL, is looking to invest over \$4.5 million over the next three years in station that he paid \$4 million for thirteen years ago.⁴ The amount he is required to invest to make the conversion is about "100 percent of average annual revenue" for a station in markets 100-150.⁵ Many stations have had to petition their state legislatures for funding to make the transition.⁶

If new and stricter regulations are adopted, they will apply equally across the board. The financial burdens of additional public

¹ Notice of Proposed Rulemaking, Public Interest Obligations of Television Broadcast Licensees, 65 FR 4211 (Jan. 26, 2000).

² Deborah McAdams, *The Business of Digital Television: September 1998 - Digital Disparity*, (visited Mar. 1, 2000) <<http://www.digitatelevision.com/business998p.shtml>>.

³ *See id.*

⁴ *Id.*

⁵ *Id.*

⁶ *See Current Briefing: Public TV Goes Digital and High-definition: How will public TV pay for the transition to DTV*, (visited Feb. 26, 2000) <<http://www.current.org/dtv/>>.

interest obligations will fall most heavily upon those stations least able to afford them. These stations, because they are typically based locally, are the ones who offer more programs in the local public interest. Why impose additional burdens that could possibly eliminate valuable broadcasters who already serve the public interest? Furthermore, the Commission claims that diversification is one of its important goals. It must be recognized that minorities own many of the smaller broadcasting stations. Additional burdens that may cause the sell or merger of minority-owned stations defeats the Commission's efforts at diversification.

Opponents of stricter regulation point out that program quality cannot be regulated. New public interest obligations could result in added low quality programming of marginal public interest value. If any new regulations are to be instituted, they should be in areas of prime importance.

II. Children and Television

The Children's Television Act of 1990 enables the Federal Communications Commission to prescribe standards regarding children's television programming.⁷ Congress has recognized that children are of vital importance and that television is a factor in their healthy development. In 1999, the proportion of children with television sets in their rooms reached a four-year high of 48.2%.⁸ The average total time children spent in front of the television averaged 4 1/2 hours per day among 2-17 year olds.⁹ This data underscores the fact that television is an important medium that influences children.

⁷ 47 U.S.C. § 303a(a) (2000).

⁸ Jeffrey D. Stanger and Natalia Gridina, The Annenberg Pub. Pol'y Ctr., MEDIA IN THE HOME 1999: THE FOURTH ANNUAL SURVEY OF PARENTS AND CHILDREN 8 (1999).

⁹ *Id.* at 9.

If the Commission feels that stricter regulations should be imposed on broadcasters, children's television is one area that is important enough to be considered. People for Better TV proposes that a minimum number of hours each week should be set aside for educational programs or services, which might include data transmission. They suggest a minimum of seven hours each week.¹⁰ This could be accomplished by one hour each day. This requirement will not be particularly burdensome considering that most broadcasters already offer this much.¹¹ Raising the standard will also not be particularly burdensome in the digital age because of the increased amount of programming available. Broadcasters must now air three hours out of 168 hours of available programming per week. With the advent of digital, programming capabilities will be doubled.

Distribution of the educational programming requirement should be left to the discretion of the broadcasters. For instance, those broadcasters who choose to multicast should be allowed to satisfy the requirement on one program stream instead of having to distribute programs throughout all their program streams. Broadcasters are more knowledgeable of which streams would be likely to reach the greatest number of children.

People for Better TV also suggest that commercials be limited during children's programs. Current regulations limit the "duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per

¹⁰ Comment by People for Better TV by Mark Lloyd, Counsel, to William E. Kennard, Chairman, Federal Communications Commission 2 (Nov. 16, 1999)(on file with the Federal Communications Commission).

¹¹ Data from the National Association of Broadcasters compiled in 1995, showed that the "amount of educational and informational programming designed for children had increased more than 100 percent between the fall of 1990, before the Children's Television Act took effect, and the fall of 1994." National Assoc. of Broadcasters, *NAB Survey Shows More Than 100% Increase in Children's Educational Programming Since 1990*, (Oct. 12, 1995) <<http://www.nab.org/Newsroom/PressRel/Releases/5295.asp>>.

hour on weekdays."¹² People for Better TV advocates that digital broadcasters be limited to no more than four commercials, no more than sixty seconds long, per hour.¹³ This proposed requirement is particularly stringent when it is considered that advertising is the way in which broadcasters generate revenue which enable them to broadcast educational programs. Because of the already burdensome costs of converting to digital, I suggest that additional requirements limiting commercials during children's programming be postponed until a later date when they are found to be necessary and feasible.

III. Enhancing Political Discourse

The Gore Commission focused its attention on encouraging voluntary efforts on the part of broadcasters. The Gore Commission recommends a voluntary standard of five minutes per night for candidate centered discourse thirty days before an election.¹⁴ Although it is agreed that voluntary efforts should be encouraged, a more beneficial approach would be to grant free air time and restrict the amount of total air time a political candidate would have for advertising. This would ensure that more affluent candidates could not saturate the airwaves just because they have more funds to purchase airtime with. However, this proposal may have constitutional limitations and may be better addressed by political campaign reform.

Why free air time for political candidates? Money is pervasive in today's political arena. Those with a good message but less money are at a disadvantage when compared

¹² 47 U.S.C. §303a(b).

¹³ Comment by People for Better TV by Mark Lloyd, Counsel, to William E. Kennard, Chairman, Federal Communications Commission 2 (Nov. 16, 1999) (on file with the Federal Communications Commission).

to their more affluent counterparts. Free air time would equalize their positions. Free air time would reduce the influence of money in politics. It would help underfunded challengers make their views known to the public. Also, it would increase and improve the information the public receives.

Many would argue that free air time would saturate the market and thus discourage people from participating in the political process.¹⁵ However, a 1997 survey by the National Association of Broadcasters showed that many candidates reject free time due to political considerations.¹⁶ Over a quarter of stations had debate offers rejected.¹⁷ This phenomenon would most likely continue even if free air time were required. Another argument that is advanced is that more free political advertising would mean more pressure on broadcasters and more negative campaign ads. However, the data is to the contrary. In a 1997 study of advertising in the New Jersey Governor's Race, the Annenberg Public Policy Center concluded that there is "a relative lack of attack" during free air time.¹⁸ The Center attributed this to the fact that "[w]hen candidates speak on camera, they are more accountable for the messages they disseminate and, as a result, less likely to attack their opponents."¹⁹ Because the time given to candidates is free, they may feel more responsible for the content of their messages.

¹⁴ James M. Burger and Todd Gray, *The Gore Commission Report on Public Interest Obligations of Digital Broadcasters: Self-Regulation and Increased Flexibility*, ¶13 (visited Feb. 28, 2000) <<http://www.digitaltelevision.com/law199p.shtml>>.

¹⁵ See National Assoc. of Broadcasters, *Issue Papers, Political 2000: Campaign Finance Reform*, (June 1999) <http://www.tvb.org/tvfacts/politics/campaign_ref.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Paul Waldman, Annenberg Pub. Pol'y Ctr, *Free Time and Advertising: The 1997 New Jersey Governor's Race* 4 (Feb. 1998).

¹⁹ *Id.*

Most importantly, the burden on broadcasters will not be great because they are already offering free time. An April 1998 report of the shows that the projected value of free air time donated by television and radio stations and national networks for debates, candidate forums, and convention coverage was about \$148.4 million.²⁰

IV. Diversification

The Commission's efforts at diversification are noble. As of 1997, minorities owned 2.8 percent of all broadcast properties in the United States.²¹ Lack of minority ownership can probably be attributed to lack of access to investment capital and historical structures. However, the Commission has recognized that policy initiative and incentive-based programs must be implemented. If one of the Commission's goal is to further the public interest, diversification serves this goal. Minority ownership can enhance diversity of viewpoint and raise minority employment.

Although the Commission's Notice of Proposed Rulemaking identifies many noteworthy policies, one in particular is worth commenting on. The Advisory Committee Report recommends that out of the returned analog spectrum one new 6 MHz channel be reserved for purposes such as educational programming directed at minority groups. This plan is analogous to giving AM radio stations to minority owners - lesser quality and a smaller audience. As an African-American I feel that it is suggested that I should appreciate the free air time given, even if it is of lesser quality and capability than digital.

²⁰ National Assoc. of Broadcasters, *A Nat'l Rep. on the Broadcast Industry's Community Serv.* (April 1998) <<http://www.broadcastpublicservice.org/1998/default.asp>>.

²¹ Nat'l Telecommunications and Information Administration Minority Telecommunications Dev. Program, *Minority Commercial Broadcast Ownership Overview*, (visited Mar. 10, 2000) <<http://www.ntia.doc.gov/reports/97minority/overview.htm>>.


Once the transition to digital is made, only those without the ability to view digital will rely on analog. Therefore, a smaller audience will be the result.

If the Commission wants to give minorities greater opportunities, why not do it by providing more funds. Provision of more funds would lead to the accomplishment of several goals. First, it would aid minorities in purchasing broadcast stations. Secondly, minority owners are more likely to provide entertainment, news, and information that appeal to minority audiences. Thus, a wider and vastly underrepresented portion of the population will be served. Finally, minority ownership fosters minority employment.

V. Conclusion

Any additional requirements placed on broadcasters should be in areas of such importance that they cannot be ignored. Increased educational programming for children, free advertising for political candidates, and the promotion of diversity in the form of investment grants are important. I feel that these issues are of such importance and so vital to the welfare of the public and our society that they would be prime targets for rule making. Please consider the burden that will be placed on broadcasters as compared to the benefits to be gained when addressing the public interest obligations of broadcasters, and thus address only issues that are vital to the welfare of the public.

Sincerely,



Valerie Latosha Mason

3L

University of TN College of Law

RECEIVED

MAR 23 2000

FCC MAIL ROOM

To: Federal Communications Commission
From: South Lewis
Re: Proposed Rulemaking
Date: March 16, 2000

INTRODUCTION AND BACKGROUND

I am responding to the request for comment by the Federal Communications Commission regarding the public interest obligations of digital television broadcast licensees. (65 Fed. Reg. 4211 (January 26, 2000)). As a law student who watches a fair amount of television (and looks forward to watching even more after I graduate), I want to comment on three particular areas of proposed licensee responsibility:

- I. The Market Should Decide what Television Broadcasters Offer
- II. Minority Access to, and Representation in, the Television Media
- III. Candidate Access to Television

DISCUSSION

- I. The Market Should Decide what Television Broadcasters Offer

Digital television capability will certainly allow broadcasters to enhance the services it provides to its viewers. This enhancement not only encompasses the quality of the picture, but digital television technology also increases the number of viewers that can be reached. To many, such as People for Better TV, these technological advancements mean greater social responsibility on behalf of the broadcasters. I propose that because the services are for the viewers, and the market is made up of the viewers, the market should determine the obligations of the digital broadcasters.

There are existing regulations which mandate certain obligations that analog broadcasters owe to the viewing public. I urge this Commission not to impose further restrictions on the broadcasters merely because they have greater technological capabilities through digital television. I am of the belief that if the viewing public at large--the market--truly demands such services and obligations from the broadcasters, then the broadcasters will respond in order to keep viewers from seeking their competitors' alternatives.

If the experts are correct, digital television technology will allow major markets which currently have 10-15 over-the-air stations to add 40 to 60 new television channels.¹ Therefore, digital television seems to result in more competition, which ultimately decreases the need for federal regulation. If digital television had the effect of decreasing the total number of broadcasters and channels, then perhaps heightened federal regulation would make more sense. However, digital television clearly increases the number of channels; therefore, if broadcasters choose to utilize the additional channels, the market will force them to expand and diversify the programs and services offered.

The ineffectiveness of mandatory programming has already been exhibited. In 1997, television stations were required to show "educational" programs for children. The broadcasters were forced to create new programs to meet the federal standards, which limited the "educational" programs to 30 minutes in length. *The Washington Post* reported that every single program was a failure. Children opted for Nickelodeon and other cable stations over the federally mandated "educational" programs on broadcast television. In fact, research after the failed programs revealed that children between the ages 2 and 17 were watching five hours a week less television than their parents

watched when they were children.² There is something ironic about this generation of children—"the couch potato generation"—being driven away from television by federally mandated and inspected "educational" programming aimed directly at children. Statistics such as these support the proposition that the market, not the federal government, is the best indicator of what the viewing public will watch on television.

II. Minority Access to, and Representation in, the Television Media

I have already addressed the general proposition that the market should determine what services and programs digital television broadcasters offer. I wish now to specifically comment on the Advisory Committee's call for more diversity, particularly minority involvement and representation, in television.

While I recognize and appreciate the call for more minority representation on television, I again propose that the market is a more effective indicator (versus the federal government) of what action broadcasters should take to address the perceived disparity. Additionally, I submit that African-Americans are not really under-represented on television, contrary to the beliefs of the Advisory Committee and many others; if African-Americans are in fact being proportionally represented, then this is further proof that the market is keeping the broadcasters "in check" and is effectively driving the television programming.

We are all aware of the belief of numerous civil rights groups that minorities are not fairly represented in television. I realize that "minority" does not refer only to "African American"; however, African-Americans are the class that I most often hear of as the under-

¹ <http://reason.com/9804/col.powell.html>

² *Id.*

represented class on television. Darnell Hunt, Professor of Sociology at the University of Southern California, recently conducted a five week study of the comedy and drama series that aired on NBC, ABC, CBS, Fox, and the 2 newer networks. "Hunt found that blacks were numerically well represented. Blacks make up 12.2 percent of the U.S. population but accounted for nearly 16 percent of the characters seen on the six networks during the period reviewed."³ Fox and NBC have 10 percent and 11 percent African-American character representation on its programs, respectively; on the other hand, nearly 15 percent of characters on ABC series and 13 percent of CBS characters are African-American.⁴ These statistics further show how the market effectively works: those broadcasters that have the demand for certain representation on its channels provide such. Broadcasters, as we are aware, are money-making entities that respond to market demand in order to protect their market share and profit margin. Therefore, I am of the belief that market demand, not federal demand, creates a better, more diversified product.

The call for additional rulemaking that would "strongly encourage" more minority representation among broadcast licensees essentially ignores other important sources of information and entertainment. Just as many policy makers assert that there is a "racial divide" in television, there still exists the misguided belief that there is also a "racial divide" on the Internet. With reinforcement of this idea in the media (and from the White House), even the well-informed have come to believe in the "digital divide."⁵ The United States Commerce Department incorrectly supported this "digital divide" by the results of its 1998 survey, which determined

³ http://www.washingtonpost.com/wp-srv/aponline/20000225/aponline011027_000.htm

⁴ Id.

that minorities had less access to the Internet in their homes. However, the survey did not account for access to the Internet at work and school.⁶ A survey by the Pew Research Center for the People in the Press revealed that 62 percent of working Americans obtain Internet access at work, while 75 percent of students get online at school.⁷ Such studies demonstrate that many Americans, both minority and non-minority alike, gather news directly off of the Internet. Hence, television is not necessarily the primary source of news for many Americans.

The evidence suggests that the Federal Communications Commission needs to take no steps to force or "strongly encourage" the digital broadcasters to distribute public interest information on alternate mediums, such as on the Internet. The statistics show that a majority of the public uses the Internet at least as frequently as television. Reasonable business owners (the broadcasters) will certainly avail themselves of the online medium, as it is almost another form of television. Currently some personal computers cost less than televisions and Internet access is certainly cheaper than cable, if not free.⁸ With so many options that digital technology will provide, broadcasters are forced to either provide programs and services to minority consumers or risk losing those viewers to the willing competitors.

Finally, the last point that I wish to make on this topic. I realize that federal licensees can be rightfully restricted and "encouraged" by the FCC. However, licenses granted due to race-based restrictions and incentives are subject to a standard of strict

⁵ <http://reason.com/9911/fe.ap.falling.html>

⁶ Id.

⁷ Id.

⁸ Id.